



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
P.O. Box 1736  
Romney, WV 26757

Joe Manchin III  
Governor

Martha Yeager Walker  
Secretary

March 24, 2006

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Dear Ms. \_\_\_\_\_:

Attached is a copy of the findings of fact and conclusions of law on your hearing held March 15, 2006. Your hearing request was based on the Department of Health and Human Resources' proposal to decrease homemaker hours under the Aged Disabled Waiver, A/DW, program.

In arriving at a decision, the State Hearing Officer is governed by the Public Welfare Laws of West Virginia and the rules and regulations established by the Department of Health and Human Resources. These same laws and regulations are used in all cases to assure that all persons are treated alike.

Eligibility for the A/DW program is based on current policy and regulations. Some of these regulations state as follows: The Aged/Disabled (HCB) Title XIX Waiver Services Program is granted to those individuals who meet all eligibility requirements. One of these requirements is that the individual must qualify medically. Eligible individuals are those who qualify medically for nursing facility level of care but have chosen the waiver program as a means to remain in their home, where services can be provided. (Aged/Disabled (HCB) Services Manual 570- 570.1b (11/1/03).

The information which was submitted at your hearing revealed that at the time of the November 9, 2005 Pre-Admission Screening Assessment, you did meet the eligibility criteria for level of care C under the Aged/Disabled Waiver Program in which you were previously assessed.

It is the decision of the State Hearings Officer to **reverse** the proposed action of the Department to decrease homemaker hours to a level B under the A/DW program.

Sincerely,

Sharon K. Yoho  
State Hearing Officer  
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review  
[REDACTED], CWV Aging - Boggess, BoSS - [REDACTED], WVMI

**WEST VIRGINIA DEPARTMENT OF HEALTH & HUMAN RESOURCES  
BOARD OF REVIEW**

\_\_\_\_\_

**Claimant,**

**v.**

**Action Number: 05-BOR-7137**

**West Virginia Department of  
Health and Human Resources,**

**Respondent.**

**DECISION OF STATE HEARING OFFICER**

**I. INTRODUCTION:**

This is a report of the State Hearing Officer resulting from a fair hearing concluded on March 15, 2006 for \_\_\_\_\_. This hearing was held in accordance with the provisions found in the Common Chapters Manual, Chapter 700 of the West Virginia Department of Health and Human Resources. This fair hearing was convened on March 15, 2006 on a timely appeal, filed December 13, 2005.

It should be noted here that the claimant's benefits have been continued pending a hearing decision.

**II. PROGRAM PURPOSE:**

The Program entitled Aged Disabled Waiver is set up cooperatively between the Federal and State governments and administered by the West Virginia Department of Health & Human Resources.

Under Section 2176 of the Omnibus Budget Reconciliation Act of 1981, states were allowed to request a waiver from the Health Care Financing Administration (HCFA) so that they could use Medicaid (Title XIX) funds for home and community-based services. The program's target population is individuals who would otherwise be placed in an intermediate or skilled nursing facility (if not for the waiver services). Services offered under the Waiver Program will include: (1) chore, (2) homemaker and (3) case management services. West Virginia has been offering the Waiver Services Program since July, 1982 to those financially eligible individuals who have been determined to need ICF level care but who have chosen the Waiver Program Services as opposed to being institutionalized.

### **III. PARTICIPANTS:**

Claimant's Witnesses:

\_\_\_\_\_, claimant

\_\_\_\_\_, claimant's daughter

\_\_\_\_\_, homemaker

\_\_\_\_\_, homemaker RN, Visiting Homemaker Services

\_\_\_\_\_ PHSS, case manager

Department's Witnesses:

Libby Boggess, Bureau of Senior Services by phone

\_\_\_\_\_ WV Medical Institute by phone

Presiding at the Hearing was Sharon K. Yoho, State Hearing Officer and a member of the State Board of Review.

### **IV. QUESTIONS TO BE DECIDED:**

The question(s) to be decided is whether the Department was correct in their decision to reduce homemaker hours under the Aged/Disabled Waiver (HCB) program.

### **V. APPLICABLE POLICY:**

Aged/Disabled Home and Community Based Service Manual §570 and §580

### **VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:**

**Department's Exhibits:**

D-1 Aged/Disabled Home and Community based Services Manual §570.1 c,d. and §580.2

D-2 Pre-Admission Screening, PAS, completed November 9, 2005

D-3 Eligibility Determination dated November 9, 2005

D-4 Notice of proposal to decrease homemaker hours December 8, 2005

**Claimant's Exhibits:**

C-1 Letter from Housing Resident Manager dated March 14, 2006

C-2 Letter from \_\_\_\_\_ dated March 21, 2006

### **VII. FINDINGS OF FACT:**

- 1) Ms. \_\_\_\_\_ is a 61-year-old female. She is an active participant in the A/DW program and her eligibility was undergoing an annual evaluation on November 9, 2005.
- 2) A WV Medical Institute nurse completed a Pre-Admission Screening (PAS) in Ms. \_\_\_\_\_'s home with the claimant, and her homemaker present. This PAS evaluation determined that the claimant remained eligible for the Aged/Disabled Waiver program

however; it was determined that the level of care that she required had decreased from level C to a level B with 17 points awarded.

- 3) This claimant has primary diagnoses of Cerebral Vascular Accident (CVA) with Hemiplegia and Aphasia.
- 4) The November 9, 2005 PAS assigned this claimant with 17 points in determining the level of care required. The evaluating nurse assigned seven (7) points in the areas of Medical Conditions/Symptoms, nine (9) points in the area of functional levels and one (1) point for inability to vacate in an emergency.
- 5) Issues addressed by the claimant's witnesses and by documentation provided were in the areas of bathing, dressing, grooming, medicating, dyspnea, wheeling and dysphagia.
- 6) The evaluating nurse did assign a point for each, bathing, dressing, and grooming. The claimant can help some with these ADLs, but her witnesses indicate she can help very little.
- 7) Ms. \_\_\_\_\_ has to have her insulin pre-measured for her, but she does administer it herself. She is able to take her other medications without any assistance from others.
- 8) The claimant does use a wheelchair in her home. Due to her right side paralysis, she can only use her left hand to wheel the chair. She does maneuver her chair independently when she is alone in her apartment.
- 9) Ms. \_\_\_\_\_ indicated that her mother is on lasiks and believes this is for dyspnea, but when the nurse questioned the claimant, regarding shortness of breath the claimant had denied any shortness of breath. Her physician reports in his letter Exhibit (C-2) that she experiences dyspnea.
- 10) During the PAS, the homemaker addressed the issue of swallowing and choking. The homemaker advised the nurse that Ms. \_\_\_\_\_ chokes easily and that her food must be cut up in small pieces for her. The nurse did not assign a point for dysphagia because there was no diagnosis supplied for this condition and there was no medication prescribed for the condition. The physician's letter Exhibit (C-2) reports that she does have frequent choking episodes and that this was her condition at the time of the PAS.
- 11) Aged/Disabled Home and Community-Based Services Manual Section 570 (D-1)-Program Eligibility for client:

Applicants for the ADW Program must meet the following criteria to be eligible for the Program:

C. Be approved as medically eligible for NF Level of Care.

- 12) Aged/Disabled Home and Community-Based Services Manual Section 570.1.a – Purpose: The purpose of the medical eligibility review is to ensure the following:

- A. New applicants and existing clients are medically eligible based on current and accurate evaluations.
- B. Each applicant/client determined to be medically eligible for A/DW services receives an appropriate LOC that reflects current/actual medical condition and short and long-term services needs.
- C. The medical eligibility determination process is fair, equitable and consistently applied throughout the state.

**13) Aged/Disabled Home and Community-Based Services Manual Section 570.1.b – Medical Criteria:**

An individual must have five deficits on the PAS to qualify medically for the A/DW Program. These deficits are derived from a combination of the following assessment elements on the PAS:

- A. Decubitus - Stage 3 or 4 (Item 24 on PAS 2005)
- B. Unable to vacate a building- a person is physically unable at all times at Level 3 or higher in walking or mentally incapable of leaving the building at Level 3 or higher in orientation with a diagnosis of dementia, Alzheimer's, or related condition. (Item 25, I and 33, on the PAS 2005).
- C. Functional abilities of individual in the home. (Item 25 on the PAS 2005).
  - Eating----- Level 2 or higher (physical assistance to get nourishment, not preparation)
  - Bathing ----- Level 2 or higher (physical assistance or more)
  - Grooming--- Level 2 or higher (physical assistance or more)
  - Dressing ---- Level 2 or higher (physical assistance or more)
  - Continence-- Level 3 or higher (must be total incontinent- defined as when the recipient has no control of bowel or bladder functions at any time)
  - Orientation-- Level 3 or higher (totally disoriented, comatose)
  - Transfer----- Level 3 or higher (one person or two person assist in the home)
  - Walking----- Level 3 or higher (one person assist in the home)
  - Wheeling----- Level 3 or higher (must be Level 3 or 4 on walking in the home to use Level 3 or 4 for wheeling in the home. Do not count outside the home)
- D. Individual has skilled needs in one or more of these areas B (g)suctioning, (h)tracheostomy, (i)ventilator, (k)parenteral fluids, (l)sterile dressings, or (m) irrigations. (Item 26 on the PAS 2005)
- E. The individual is not capable of administering his/her own medications is defined as

an individual not capable of administering his/her own medications if the prescription medication must be placed in the recipient's hand, mouth, tube or eye by someone other than the recipient at all times.

- 14) Aged/Disabled Home and Community Based Service Manual # 570.1.c,d:  
There are four levels of care for clients of ADW Homemaker services. Points will be determined as follows, based on the following sections of the PAS 2005:

- #23 1 point for each (can have total of 12 points) Medical Condition
- #24 1 point Decubitus
- #25 Level 1 - 0 points Functional levels  
Level II - 1 point for each item A through I  
Level III - 2 points for each item A through M; I (walking) must be equal to or greater than III before points given for J (wheeling)  
Level IV - 1 point for A, 1 point for E, 1 point for F, 2 points for G through M
- #26 1 point for continuous oxygen
- #27 - 1 point for "NO" answer – medication administration
- #33 - 1 point if Alzheimer's or other dementia
- #34 - 1 point if terminal

Levels of Care Service Limits:

Level A	5-9 points	62 Hours per Month
Level B	10-17 points	93 Hours per Month
Level C	18-25 points	124 Hours per Month
Level D	26-44 points	155 Hours per Month

### VIII. CONCLUSIONS OF LAW:

- 1) The Aged Disabled Waiver policy provides that an individual must be assigned 18 to 25 points to qualify as requiring a Level C in care, which is 124 hours per month in homemaker services. 10 to 17 points indicates a Level B which is for 93 hours per month in homemaker services. The evaluating nurse assigned 17 points, which falls within the Level B of care.
- 2) Evidence and testimony support that the claimant should have been assessed one (1) point during the December 5, 2005 PAS for dysphagia. Testimony and evidence are clear that Ms. \_\_\_\_\_ has problems with swallowing. The absence of a reported diagnosis prevented the evaluating nurse from assigning this point when the homemaker reported the choking to her. The physician's letter (Exhibit C-2) reports that a major stroke in the year 2001 resulted in her experiencing frequent choking episodes.
- 3) Evidence and testimony did not support that additional points should have been assessed for medicating, dyspnea, bathing, dressing, grooming or wheeling. The claimant is able to administer her own insulin and policy does not include insulin in the medicating category. The physician did indicate that the claimant experiences dysnea however; testimony does not support this. The claimant clearly is able to help some

with bathing, dressing and grooming so the one (1) point for each is appropriate. The claimant does have difficulty wheeling her chair due to her paralysis but she does manage to wheel herself when alone in her home.

**IX. DECISION:**

After reviewing the information presented during this hearing and the applicable policy and regulations, I find that the claimant does have swallowing problems and therefore should be assessed on (1) additional point, which would put her in the level C category for care. With the authority granted to me, by the WV State Board of Review, I am ruling to **reverse** the Agency's proposed action to decrease this claimant's homemaker services under the Aged/Disabled Title XIX (HCB) Waiver program.

**X. RIGHT OF APPEAL:**

See Attachment

**XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this 27<sup>th</sup> Day of March, 2006.**

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**Sharon K. Yoho**  
**State Hearing Officer**